Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Improving Competitive Broadband Access to Multiple Tenant Environments	)	GN Docket No. 17-142
	)	
	)	

COMMENTS OF T-MOBILE USA, INC.

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T-Mobile USA, Inc. ("T-Mobile")[1/] submits these comments in response to the *Notice of Proposed Rulemaking* in the above-referenced proceeding on potential ways to increase competition and improve broadband service to Multiple Tenant Environments ("MTEs").[2/] T-Mobile applauds the Commission's continued efforts to ensure that consumers have a choice of broadband providers in shared environments. Because broadband access is increasingly wireless, the Commission should expand its assessment of where broadband services are consumed and the infrastructure needed to deliver them. T-Mobile urges the Commission to ensure that wireless carriers have access to a range of infrastructure in a variety of shared environments to provide high-quality, reliable service to their customers wherever they are located.

I. INTRODUCTION AND SUMMARY

The Commission has correctly recognized in its recent actions that access to infrastructure is critical for providers to offer Fifth Generation wireless ("5G") services.[3/] As

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1/ T-Mobile USA, Inc. is a wholly-owned subsidiary of T-Mobile US, Inc., a publicly traded company.

2/ *In the Matter of Improving Competitive Broadband Access to Multiple Tenant Environments*, Notice of Proposed Rulemaking and Declaratory Ruling, DA 19-65 (rel. July 12, 2019) ("*NPRM*").

3/ *See, e.g., In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment et al*., 33 FCC Rcd 9088 (2018) ("*2018 Infrastructure Order*") (addressing state and local barriers to deployment).

Chairman Pai observed: "[a]ll the spectrum in the world won't matter if we don't have the infrastructure needed to carry 5G traffic…. And let's also be clear about one thing: when you raise the cost of deploying wireless infrastructure, it is those who live in areas where the investment case is most marginal – rural areas or lower-income urban areas – who are most at risk of losing out."[4/] The FCC has noted that ensuring access to MTEs is critically important, as thirty percent of Americans live in such a location, and millions more work in one.[5/] By promoting greater access to MTEs – where many wireless consumers spend much of their day – the Commission can build upon its strong record of accelerating next-generation deployments and promoting competition. The Commission must therefore take steps to ensure that customers of all wireless providers, not just the customers of carriers with the biggest budgets or those that are first to enter a venue, have access to broadband while they are within MTEs.

This means that the Commission should adopt rules that facilitate provider access to the facilities that provide service within MTEs – distributed antenna systems ("DAS"), small cells, and the infrastructure necessary to access both. The Commission should also consider ensuring access to other venues not historically defined as MTEs, like sports arenas and college campuses. It should further ensure that providers do not enter into agreements that restrict access to building rooftops. In each case, the Commission should prohibit providers from entering into or enforcing agreements that limit other providers' ability to access a location, either to attach to existing infrastructure or to install their own.

4/ *Id.* (Statement of Chairman Ajit Pai).

5/ *NPRM* at ¶ 1.

II. THE COMMISSION SHOULD ADOPT RULES THAT ENSURE ACCESS TO SHARED ENVIRONMENTS FOR DAS AND OTHER TECHNOLOGIES

A. Consumers Increasingly Access Broadband Through Wireless Networks

Wireless broadband is becoming the broadband technology of choice for Americans, both at home and on the go. Smartphones have become ubiquitous, with more than 80% of Americans owning one and nearly 20% of Americans using that smartphone as their only home broadband access, foregoing a wired connection entirely.[6/] This trend is even more pronounced among lower-income adults, where the percentage of "smartphone only" Internet users is over 25%.[7/] And as unlimited data plans, pioneered by T-Mobile, continue to gain popularity and carriers deploy advanced 5G networks, this trend will only accelerate. As T-Mobile has described, 5G networks will allow consumers to fully "cut the cord" and rely exclusively on their mobile wireless service for broadband.[8/]

For consumers to realize the full benefits of cutting the cord, they must be able to access wireless broadband service anywhere and anytime. That means they need access in a variety of environments, including MTEs like apartment or office buildings and large retail spaces like shopping malls, as well as other shared environments such as sporting and entertainment venues, college campuses, and large resorts.[9/]

6/ Monica Anderson, *Mobile Technology and Home Broadband 2019*, PEW RESEARCH CENTER (June 13, 2019) https://www.pewinternet.org/2019/06/13/mobile-technology-and-home-broadband-2019/.

7/ *Id.*

8/ T-Mobile US, Inc. and Sprint Corp., *Description of Transaction, Public Interest Statement, and Related Demonstrations*, WT Docket No. 18-197, at 61-64 (June 18, 2018) ("*T-Mobile Public Interest Statement*").

9/ As noted below, the Commission should extend any rules it adopts in this proceeding to other locations not currently considered MTEs. For convenience, T-Mobile generally refers to all of these environments as "MTEs."

B. DAS Access is Critical to Serving MTEs

DAS are important for carriers to supplement their traditional network architecture with targeted deployments that provide additional coverage and capacity in areas where large numbers of customers congregate. As T-Mobile explained in its comments in response to the *Notice of Inquiry* in this proceeding, this supplemental coverage is often critical to ensuring connectivity inside buildings, where outdoor deployments are insufficient, and where large numbers of users can require additional capacity.[10/] DAS networks allow carriers to provide targeted service to deliver the ubiquitous, high-quality connectivity that wireless customers have come to expect, even underground, indoors, or in large crowds. As the Commission has recognized, lack of ubiquitous wireless service – which DAS help to address – is a public safety concern[11/] in addition to being frustrating for customers.

C. Exclusivity Agreements Inhibit Equal Access to MTEs

While DAS networks allow carriers to provide ubiquitous, high-quality service in MTEs, exclusivity agreements between carriers or wireless infrastructure companies and building owners often restrict a provider's ability to attach to an existing DAS, install its own coverage solutions, or otherwise access or deploy infrastructure to an MTE.[12/] These agreements can create an effective monopoly and restrict access to MTEs in several ways.

10/ *Comments of T-Mobile*, GN Docket No. 17-142, at 2-3 (Aug. 22, 2017) ("*T-Mobile NOI Comments*").

11/ *In Re Wireless E911 Location Accuracy Requirements*, Third Further Notice of Proposed Rulemaking, 29 FCC Rcd 2374, ¶¶ 23-37 (2014) (noting that the "great majority" of 911 calls come from mobile devices) ("*2014 E-911 NPRM*").

12/ As noted below, in some cases exclusivity agreements may be entered into or imposed by a state or local government that owns or controls a facility. In that case, the Commission has the authority to prohibit a state or local government from enforcing those terms and conditions. References to exclusivity and similar provisions in "agreements" also include the terms imposed by state and local governments.

First, these agreements can impose physical limitations on, or a complete denial of access to, subsequent providers. For example, a DAS designed for the first (or "host") carrier might require extensive modifications – which may not be permitted under the agreement – to be compatible with other carriers' network architecture.[13/] As the Commission noted, this is particularly problematic for 5G deployments,[14/] which may be incompatible with an outdated DAS.[15/] Even more concerning, these agreements can be *explicitly* exclusive, prohibiting the property owner from entering into *any* agreement with a subsequent carrier to allow that carrier to install or access infrastructure, including to install their own coverage solution, with no recourse for those carriers.

Second, these agreements can make it economically infeasible for subsequent carriers to provide service by forcing carriers to pay unreasonable, non-cost-based fees for the right to access an existing DAS, with no recourse for alternate arrangements. In the *NPRM*, the Commission specifically referenced T-Mobile's concerns, raised in its *NOI* comments.[16/] As T-Mobile noted in those comments, such fees can be in the millions of dollars, despite the cost of new infrastructure being in the tens of thousands.[17/]

As with any unnecessary expenses, costs from exclusivity agreements limit competition and prevent carriers from providing the best coverage. Where a priority location is served at an artificially high cost, carriers must divert funds which otherwise might be used to provide service

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13/ As T-Mobile discussed in its *NOI* comments, this occurs frequently. *See T-Mobile NOI Comments* at 4.

14/ *NPRM* at ¶ 23.

15/ *T-Mobile NOI Comments* at 4-5.

16/ *NPRM* at ¶ 22.

17/ *T-Mobile NOI Comments* at 5.

elsewhere.[18/] Alternatively, additional costs may shift a carrier's calculation regarding whether to serve a location at all. In both instances, competition and service are harmed with no corresponding public interest benefit. This calculation is particularly meaningful for carriers with fewer resources, who may be forced to pay unreasonably high site costs for access to "must serve" locations, like densely populated MTEs, meaning they have less to spend on deployment in locations with a smaller profit margin, such as those in rural areas. Similarly, these exorbitant fees also reduce competition by exaggerating the first-mover advantage and hindering subsequent entrants to the market, harming competition and consumers.

Third, agreements between providers and property owners may limit the installation or use of lawful radiofrequencies within the venue. In T-Mobile's experience, DAS hosts make unfounded claims that they must restrict frequency use to prevent interference, but in fact they simply wish to restrict competition or extract additional unreasonable fees when carriers seek to add more frequencies to the DAS. While entities are justified in taking reasonable steps to protect their networks from harmful interference, the Commission must ensure that restrictions on permitted spectrum bands in those agreements are not excuses for monopolistic, anti-competitive behavior such as restricting the lawful use of particular frequencies (whether licensed or unlicensed) in order to elicit additional payments at a later date.

Exclusivity agreements between carriers and property owners have prevented T-Mobile from gaining access to a long list of competitively important MTEs. For example, T-Mobile was recently effectively denied access to two separate large office towers in Manhattan due to a

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[18/] *2018 Infrastructure Order* at ¶¶ 28, 64 (noting that savings from lower costs in "must-serve" urban areas will lead to more dollars spent on deployment in rural areas).

combination of equipment restrictions and unreasonably high fees.[19/] In one instance, a carrier contracted with the owner to provide the exclusive wireless solution within the building, but deployed a DAS network that could accommodate only two carriers. When T-Mobile tried to gain access to the building as a third carrier, it was told it would have to bear the full cost of replacing the DAS and was prevented from deploying its own indoor coverage solution. In the other, a wireless carrier had an exclusivity agreement with the building but the equipment that supported the existing DAS had been discontinued, meaning the new parts needed to accommodate T-Mobile's network were unavailable. Under the terms of the agreements between the building owner and the host carrier, T-Mobile again would have been required to pay for replacing the entire DAS, at a cost of millions of dollars. These are just a few of the many instances where T-Mobile has been denied access to a building, to the detriment of consumers.

As described above, exclusivity agreements restrict competition and provide no meaningful incentive to promote deployment. If there is a customer need, entities will seek to deploy the infrastructure necessary to meet that demand; there is no need to offer exclusivity to promote deployment. If the fee structure is designed fairly, each carrier will pay its own way, and there will be no "free rider" problem where subsequent carriers receive a windfall from following early adopters.

D. Small Cell Deployments Are Increasingly Important Inside MTEs

While DAS continue to provide coverage and capacity enhancements in many MTE environments, carrier-installed small cell deployments are now beginning to proliferate to meet

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19/ High-rise buildings are particularly important to access through in-building coverage solutions such as DAS, because the antennas on traditional outdoor macro or small cell deployments are generally pointed down.

some of the same needs. While small cells have traditionally been deployed outdoors, they may also be located indoors, similar to unlicensed hot-spots or Wi-Fi routers. But the exclusivity agreements described above not only restrict access to DAS networks, but often also prevent carriers from deploying small cells within buildings as an alternative coverage solution. The Commission should therefore extend any relief relating to MTE access not only to DAS networks, but also to restrictions on the deployment of small cells. By taking this technology-agnostic approach to its rules, the Commission can allow providers and property owners to determine the deployment that is best for each location and network, lowering costs, and increasing competition.

While small cells can serve a similar function as DAS by allowing providers to enhance both coverage and capacity, they can also provide some benefits that DAS cannot. Because they are carrier-specific, different providers can customize deployments to their specific needs. For example, if, because of nearby outdoor deployments, a carrier already has reliable coverage in one area of the MTE, it can design its small cell deployments to take into account that coverage, whereas another carrier may need to deploy small cells to supplement its coverage in the same location. Because, unlike a DAS, neither carrier is necessarily dependent on common infrastructure, both can install only the equipment they need to provide high-quality service and no more.

Small cells are also particularly important for 5G networks, which may not be as easily implemented with DAS. As carriers move to deploy 5G infrastructure in MTEs, they will often need to install small cells, rather than attaching to an existing DAS. This will be especially important for networks utilizing millimeter-wave bands, which are likely to be highly specific to each carrier's network – different carriers may rely on different millimeter wave bands.

Further, because small cells offer the added benefit of providing carrier redundancy, there are powerful public safety reasons for ensuring that multiple small cell deployments are permitted in an MTE.[20/] The existence of multiple carriers' equipment can help ensure redundant coverage for emergency calls and first responders' devices when one carrier's network is unavailable. If one (or more) network is compromised, carriers can (and will) share resources to ensure continued coverage.[21/] This is critically important in emergency situations, when ensuring reliable, ubiquitous coverage can be a matter of life and death. As the Commission has noted, wireless networks carry the vast majority of 911 calls.[22/] Since emergencies can happen anywhere, wireless networks must provide coverage everywhere, and having redundant systems that can serve as backups for one another dramatically increases the likelihood that calls will connect in an emergency.

Because small cells in an MTE will serve similar needs as DAS in those locations – filling a coverage gap or otherwise providing additional capacity to ensure ubiquitous, high-quality connections for customers – any protections the Commission implements to ensure carriers have access to DAS should also apply to the deployment of carrier-installed small cells.

20/ In contrast to a DAS, which typically employs a centralized system and is therefore vulnerable to outages, diffuse small cell deployments are not necessarily dependent on one another or shared infrastructure.

21/ For example, in the aftermath of major storms in New York and New Jersey and in the Caribbean, networks entered into agreements to allow each other's' customers to roam across networks, dramatically increasing each network's coverage area in the affected locations. *See* Federal Communications Commission, *Communications Status Report for Areas Impacted by Hurricane Maria*, Oct. 15, 2017; Thomas Gryta, *AT&T, T-Mobile Team Up as Damaged Networks Still Strained*, WALL ST. J. (Oct. 31, 2012) https://www.wsj.com/articles/SB10001424052970204846304578091442059702404.

22/ *2014 E-911 NPRM*.

E. Access to Transport is Critical for DAS and Small Cell Deployments

While ensuring the ability to deploy DAS and small cells within a property is important, this equipment is only useful if carriers have access to transport *to* the DAS or their small cell deployments. This may include access to conduits or poles on the property or the right to run the carrier's own wiring, either on the property around a building or within a building. As discussed below, this is particularly important where a single property owner may control the adjacent land around the location being served. The Commission should ensure that any rules it applies to DAS or small cell access also apply to access to transport to the facilities.

F. Some Single-Occupant Locations Should be Included in the MTE Access Rules

The Commission's MTE access proceedings have historically focused on apartment and office buildings and similar locations.[23/] But the Commission must consider other venues in ensuring access for wireless providers and extend relief from exclusivity agreements to those locations as well. While the Commission has not needed to ensure open access for customers of different *wired* services when one entity occupies and controls the entire location,[24/] this is not true of single-occupant locations that serve large numbers of consumers, each of whom has their own relationship with a *wireless* carrier. As discussed above, "cord-cutting" and the proliferation of smartphones and unlimited data connections have led consumers to expect that they will have access to high-quality broadband wherever they are. The Commission's MTE

23/ *See, e.g.*, *In the Matter of Promotion of Competitive Networks in Local Telecommunications Markets*, Report and Order, 23 FCC Rcd 5385 (2008) ("*2008 MTE Order*"); *In the Matter of Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 20235, ¶ 16 (2007); *In the Matter of Promoting Competitive Networks in Local Telecommunications Markets*, Report and Order, 15 FCC Rcd 22983 (2000) ("*2000 MTE Order*").

24/ *2000 MTE Order* at ¶ 15.

rules are intended to ensure that Americans have access to high-quality, reasonably-priced communications services, even in locations where they are in a shared environment that is not under their exclusive control, recognizing that the most effective way of achieving that goal is by promoting competitive access to those locations for multiple providers. Today, that means a location that houses many consumers should be accessible by *every* wireless carrier, regardless of whether or not the location has multiple "occupants" and therefore meets the current definition of an MTE. Americans are not always at home or in their office, and Commission's protections should cover other "shared" environments where consumers expect and need access to their wireless broadband provider of choice.

For example, at sports and entertainment venues, ski resorts, and college campuses, among others, one entity may own and/or operate the entire space, but there may not be multiple "occupants" or "units" under the Commission's current formulation of the MTE rules designed for wireline competition.[25/] For wireless providers, these spaces present the same challenges as traditionally-defined MTEs – large numbers of wireless customers congregate in these locations and DAS or small cell networks may be critical to providing reliable service. This could be because traditional network coverage may be insufficient due to geography (as in ski resorts) or due to the number of people attempting to access wireless networks (as in sports venues). In both cases, DAS or small cells can help supplement existing coverage. But exclusive agreements between the owner of the location and a particular carrier or infrastructure provider may restrict the ability of subsequent carriers to access the location on reasonable terms and at reasonable rates in the same way that those restrictions apply to locations that the Commission traditionally considers MTEs.

25/ *See NPRM* at ¶ 1, n.2; *see also* 47 C.F.R. § 76.2000 and 47 C.F.R. § 64.2501.

Sports venues in particular are among the most difficult locations to gain access. For example, at two recent high-profile sporting events, T-Mobile sought the right to install infrastructure for its 5G network at each stadium, but was denied access because of exclusive agreements between the venue owners and another wireless carrier. These events would not only have offered a unique opportunity for T-Mobile (and its competitors) to demonstrate their network capabilities, but were at locations where customers expected their network's service to be seamless and of high quality. Being unable to offer the best service available undermined T-Mobile's ability to compete and frustrated consumer expectations.

Other shared locations present their own unique reasons to ensure competitive wireless access. For example, at ski resorts and other remote sites, carriers require access to the property in order to provide *any* service, meaning an exclusivity agreement could prevent other customer devices from even connecting to their own networks. Such restricted access is unacceptable in the modern "connectivity everywhere" marketplace, and is a danger to public safety, since it impairs the ability of visitors to those locations to access emergency resources and services when needed.

Similarly, college campuses, which share many characteristics with MTEs but are not covered by the Commission's existing rules,[26/] are especially important locations to ensure carrier access. College students rely heavily on Internet access for research and similar activities. Combined with the fact that cord-cutting, discussed above, is even more pronounced among young adults,[27/] those on college campuses are more dependent than most on being able

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26/ 47 C.F.R. § 76.200.

27/ *See T-Mobile Public Interest Statement* at 61-62.

to access the wireless provider of their choice. Restrictions on access to those networks will limit use of this critical tool and harm competition in the market to serve these populations.

III. THE COMMISSION SHOULD ENSURE ACCESS TO ROOFTOPS

While providers require access to DAS, small cells, and other infrastructure to serve shared locations like MTEs, they also continue to deploy antennas on rooftops. Building rooftops are important sites for the installation of wireless equipment, sometimes because of limited tower availability in an area or because of high fees for tower access. Moreover, access to rooftops in office parks and similar locations can offer the same type of benefits described above that small cells and DAS systems provide. But many buildings have rooftop exclusivity agreements that prevent subsequent carriers from securing access on equal footing. As with DAS and other interior exclusivity agreements, rooftop exclusivity agreements harm competition by solidifying monopoly or near-monopoly access to certain locations and prevent subsequent carriers from ensuring ubiquitous coverage to their customers.

IV. IN EACH OF THESE CASES THE COMMISSION SHOULD ENSURE COMPETITIVE ACCESS TO INFRASTRUCTURE

To address the restrictive agreements described above, the Commission should model relief after current rules and policies that prohibit: (i) providers from entering into or enforcing exclusivity agreements that limit the ability of subsequent providers to access the property, either to attach to existing infrastructure or to install their own; and (ii) state and local governments from imposing similar conditions.

A. The Commission Should Restrict Providers from Entering Into Exclusivity Agreements

The Commission's existing MTE rules prohibit carriers from, for example, "enforce[ing] or execut[ing] any provision in a contract that grants to it the exclusive right" to serve an MTE,[28/] or "enter[ing] into any contract…that would in any way restrict the right of a [property owner] to permit" another carrier access to serve tenants on the premises.[29/] These prohibitions are designed to prohibit anticompetitive behavior that would undermine the competitive marketplace for telecommunications services and should be the model for the Commission's actions in updating its rules to protect wireless carriers' access to MTEs. The Commission should apply this prohibition against exclusivity agreements to all providers under its jurisdiction and to all agreements that restrict others' access, whether explicitly or implicitly through the inclusion of onerous terms and conditions or unreasonable fees. As discussed above, problematic provisions include not just the requirement to use particular equipment that may be incompatible with a subsequent carrier's network or restrain deployment options, but also limitations on particular frequencies that carriers may wish to use and on upgrades they can make to ensure compatibility with their modern networks. And the Commission should also ensure that the prohibition is not limited to DAS, but includes small cells because, as noted above, 5G network deployments will likely rely heavily on small cells more than they will DAS, as well as access to transport facilities and other related wireless infrastructure, and rooftops.

In the alternative, the Commission may wish to generally prohibit exclusivity agreements but permit targeted clauses that allow a carrier to recoup reasonable costs, ensuring that these

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28/ 47 C.F.R. § 76.200.

29/ 47 C.F.R. § 64.2500.

rights do not otherwise grant the carrier monopoly rents simply because it was the first to reach an agreement with the property owner. For example, the Commission could impose short time limitations on exclusivity agreements tied to the recoupment of costs, or prohibit fees for subsequent carriers above and beyond the costs of designing, deploying, and operating the system. Carriers are in the business of serving their customers; their business plans should not be based on receiving monopoly rents from other carriers under MTE exclusivity agreements.

Even if the Commission permits narrowly-defined exclusivity clauses for the sole purpose of ensuring that an investment is recouped, carrier-property owner agreements should not be permitted to include prohibitions or restrictions on the installation of equipment by subsequent carriers that do not attach or otherwise connect to the first carrier's installation, or to impose additional charges (beyond cost-based fees) on modification of equipment for subsequent carrier use. The same is true of restrictions on the use of particular frequencies, except where those restrictions are based on an actual, demonstrable risk of harmful interference; any provision in a carrier-property owner agreement that includes limitations on the use of any lawful frequency by subsequent carriers must only include limitations actually necessary to ensure non-interference between networks, and no more.

T-Mobile understands that in some circumstances, physical limitations or sound engineering practices may restrict access to DAS, transport, or small cell installations for subsequent providers. Those restrictions should be addressed on a case-by-case basis. But these circumstances should be distinguished from *a priori* agreements to limit access to keep competitors out or generate monopoly rents.

B. The Commission Has Clear Authority to Impose Such Regulations on Carriers

These proposals to ensure access to MTEs mirror the Commission's prior actions, which have focused on controlling the conduct of Title II- and Title VI-regulated entities. As the NPRM illustrates, the Commission has a long history of restricting these providers' agreements with property owners under its Section 201(b) authority.[30/] This provision explicitly grants the Commission the power to regulate "practices…for and in connection with [interstate or foreign] communication service" to ensure they are "just and reasonable."[31/]

As the Commission has noted in the past, agreements that restrict access to MTEs "discourage the deployment of broadband facilities," which is contrary to the Commission's goal of encouraging such deployment to promote competition among facilities-based providers, benefiting American consumers, and therefore should be prohibited as being contrary to the public interest.[32/] The Commission has made clear that MTE access protections are "important safeguards [to] create parity for the provision of telecommunications services to customers regardless" of where they are located and ensure that "exclusive contracts no longer serve as an obstacle to competitive access in the telecommunications market."[33/] Exclusive agreements "impede the pro-competitive purposes of [the Communications Act] and appear to confer no substantial countervailing public benefits" making them "'an unreasonable practice' under Section 201(b)."[34/]

30/ *NPRM* at ¶¶ 32-35.

31/ 47 U.S.C. § 201(b).

32/ *Supra* note 22.

33/ *2008 MTE Order* at ¶ 1.

34/ *Id*. at ¶ 14. These comments focus on regulation of Title II and Title VI entities. Nevertheless, the Commission should explore its potential authority over other entities that control access to wireless infrastructure facilities and that engage in comparable anticompetitive behavior.

The Commission is correct that it has authority under Section 201(b) to facilitate broadband competition through its jurisdiction over carrier infrastructure agreements. T-Mobile agrees that agreements for MTE access for DAS or small cell deployments are "in connection" with the provision of a communication service, meaning there is no distinction in the Commission's underlying authority from other MTE regulations that have been upheld on challenge.[35/]

C. The Commission Has Clear Authority to Impose Similar Requirements on State and Local Governments

As noted above, the Commission recently took an important step to remove regulatory barriers that could inhibit the deployment of next-generation wireless services by clarifying when state and local government actions operate as effective prohibitions in violation of Sections 253(a) and/or 332(c)(7) of the Act.[36/] In the *2018 Infrastructure Order* the Commission found that a state or local legal requirement constitutes an "effective prohibition" of service under both Sections 253(a) and 332(c)(7) if it "materially limits or inhibits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment."[37/] The Commission observed that a state or local legal requirement can function as an effective prohibition either because of the resulting financial burden or because of a resulting competitive disparity, and that a competitor being treated materially differently than similarly situated providers creates a prohibitory effect.[38/]

35/ *See NPRM* at ¶ 1, n.2.

36/ *See generally 2018 Infrastructure Order*.

37/ *Id*. at ¶ 35.

38/ *Id.* at ¶¶ 38-42.

State and local governments often control access to MTEs, both as currently defined by the Commission and under T-Mobile's suggested formulation. For example, governmental office buildings, transportation hubs (such as airports, train stations, metro stations/tunnels, etc.), and municipally-owned sporting venues can all present issues of coverage and capacity as identified above. Providers' ability to serve customers in these publicly owned locations depend on access to DAS, rights to install small cells, and the access to transport mechanisms for both, just as they do for privately owned venues. Similarly, the rooftops of government-owned buildings are often excellent locations to site wireless antennas and associated equipment. But T-Mobile has found that many of the problematic practices and limitations described above, including exclusivity agreements, are common in facilities owned or operated by state and local governments.

Therefore, the Commission should find that the type of limitations described above, when imposed by state and local governments, materially limit or inhibit the ability of carriers to compete in a fair and balanced environment and therefore create effective prohibitions in violation of 253(a) and 332(c)(7)(B)(i)(II). Additionally, because the exclusivity agreements described above are discriminatory by their very nature, in that they treat similar providers differently, they therefore violate Section 332(c)(7)(B)(i)(I) of the Act. And while the Commission may prohibit *providers* from entering into agreements that affect any facility – including those owned or operated by state or local governments – Sections 253(a) and 332(c)(7) give the Commission another source of authority to remove these barriers to infrastructure deployment and ensure all consumers in state and local-owned locations benefit from access to the wireless services they have come to expect and demand.

V. CONCLUSION

The future of wireless networks depends on wireless carriers' ability to provide high-quality service to their customers anywhere they are. MTEs, including the "single-entity" locations described above, may be difficult for carriers to serve because of restrictive agreements with property owners that undermine competition and provide first-mover carriers with monopoly rents. But the modern wireless market is premised on "anywhere, anytime" connectivity. The Commission should therefore further its goals of encouraging ubiquitous broadband deployment by removing these barriers to entry, prohibiting regulated entities from entering into or enforcing agreements which restrict the rights of subsequent carriers to deploy or access infrastructure and serve their customers, and prohibiting state and local governments from enforcing similar provisions. Doing so is in the public interest and within the Commission's clearly-established jurisdiction.

Respectfully submitted,

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